

STATE OF MAINE  
OFFICE OF SECURITIES  
121 STATE HOUSE STATION  
AUGUSTA, ME 04333-0121

IN RE:

James L. Clifford.

NOTICE OF INTENT  
Case No. 06-073

ALLEGATIONS

1. James L. Clifford ("Clifford") (CRD # 1419478) is an individual who has been licensed in Maine as a sales representative or agent since at least 1985. His last known address is 955 Eastern Avenue, Holden, Maine 04429.
2. From December 4, 1997, to the present, Clifford has worked as a sales representative or agent at the Brewer, Maine, branch office of Investors Capital Corp. ("ICC").
3. Pearl P. Schoppe ("Ms. Schoppe") was a life-long resident of Orono, Maine, and the valedictorian of the 1936 graduating class of Husson College in Bangor, Maine.
4. In May of 1996 Ms. Schoppe established a living trust (the "Schoppe Trust") with herself as trustee and with two of her relatives designated as trustees upon her death. The original trust document directed that upon Ms. Schoppe's death, after payment of any of Ms. Schoppe's debts, expenses and taxes, and certain distributions, the remainder of the trust property was to be held in trust for Husson College with income distributions to fund a scholarship program.
5. Ms. Schoppe was conservative with her investments. She essentially bought only certificates of deposits and fixed annuities.
6. In October of 1998, Ms. Schoppe, then age 80, amended the trust document to, among other things, change the trustee upon her death to Clifford. The amendment also changed the provision regarding the distribution of the remainder of her trust property. As amended, instead of the property being held in trust for Husson, the trust instrument dictated that the property was to be "distributed to the National Heritage Foundation F.B.O. Pearl P. Schoppe Foundation."
7. The charitable purpose stated by Ms. Schoppe on the National Heritage Foundation application was "Assist students of the Greater Bangor/Brewer, Orono/Old Town, ME area who need financial aid to attend Husson College. To

- be paid out interest only 80% of interest to go to students, 20% of the interest to go back into the Foundation so foundation will continue to grow.”
8. Ms. Schoppe died on January 19, 2000.
  9. On March 7, 2000, in Singer Island, Florida, Clifford and John T. “Dock” Houck, II, CEO of National Heritage Foundation, (“NHF”) completed the paperwork for “National Heritage Foundation Inc. FBO Pearl Schoppe FNDTN” to purchase a \$150,000 variable annuity from Conseco Variable Annuity Insurance Company through ICC, using funds from the Schoppe Trust.
  10. On May 11, 2000, Clifford sent an additional \$50,000 from the Schoppe Trust’s checking account to Conseco to add to the variable annuity.
  11. The subaccounts chosen by Clifford and Houck were largely more-risky growth funds, when Ms. Schoppe’s stated intent and investment history dictated the use of more conservative income-producing investments.
  12. The variable annuity sold by Clifford to the foundation was unsuitable for the charitable purposes expressed by Ms. Schoppe. There was no tax benefit and no value to having a death benefit on the life of Mr. Houck to offset the higher costs and reduced liquidity of the investment.
  13. Clifford received \$12,600 in commissions on these transactions. In addition, Clifford has paid himself trustee fees exceeding \$42,000.00 from the trust assets despite the fact that he appears to have provided little if any valuable services to the trust.
  14. Since the purchase of the variable annuity in March of 2000, Husson College has received no scholarship money from the Pearl P. Schoppe Foundation.
  15. Under federal law, variable annuities are securities and the offer and sale of variable annuities is regulated by the United States Securities and Exchange Commission (the “SEC”) under the Securities Act of 1933 and Securities Exchange Act of 1934.
  16. The NASD is a national securities association registered with the SEC under §15A and in accordance with the provision of §19(a) of the Securities Exchange Act of 1934.
  17. NASD Rules are filed with the SEC and promulgated under §19(b) of the Securities Exchange Act of 1934. NASD rules apply to “all members and persons associated with a member. Persons associated with a member shall have the same duties and obligations as a member” under the association’s rules. NASD Rule 0115.

18. ICC is a member of NASD and Clifford is a person associated with ICC.
19. NASD Rule 2310 requires that a member have reasonable grounds for believing that a recommended purchase is suitable for a customer based on the facts disclosed by the customer including the customer's investment objectives.
20. By virtue of his training and experience, Clifford knew the requirements of NASD Rule 2310. Through his customer relationship with Ms. Schoppe, Clifford knew her investment objectives and the charitable purpose for which she established the Pearl P. Schoppe Foundation. Thus, Clifford intentionally or knowingly failed to comply with NASD Rule 2310. 32 M.R.S.A. §10313(1)(B).
21. By using funds of the Schoppe Trust to purchase an unsuitable investment, Clifford engaged in unlawful or unethical conduct in the securities business. 32 M.R.S.A. §10313(1)(G).
22. Pursuant to 32 M.R.S.A. §§10313 and 16702, the Securities Administrator may, after notice and opportunity for hearing, issue an order to revoke the license of a licensee or impose a bar on a licensee if the Securities Administrator finds that the order is in the public interest and that the licensee: (1) has engaged in unlawful, unethical or dishonest conduct in the securities business; or (2) has intentionally or knowingly violated or failed to comply with a rule under the Securities Exchange Act of 1934.

### NOTICE

Notice is hereby given that the Securities Administrator intends to issue an Order to Revoke Clifford's Agent License and Censure Him or Bar Him from Association under 32 M.R.S.A. §§10313(1) and 16702(1).

If Clifford wants to request a hearing in this matter, he must do so in writing within thirty (30) calendar days of the date of this Notice of Intent. 32 M.R.S.A. §§10708, 16702(1).

Date: November 28, 2006

s/Michael J. Colleran  
Michael J. Colleran  
Securities Administrator

Reviewed by:

Date: November 28, 2006

s/Bonnie E. Russell  
Bonnie E. Russell  
Assistant Securities Administrator

Presented by:

Date: November 28, 2006

s/Willis P. Smedberg  
Willis P. Smedberg  
Investigator/Examiner